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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
Twenty-second session

Summary record of the 274th meeting
Held at the Palais des Nations, Geneva, on Tuesday, 14 April 2015, at 10 a.m.

Chairperson: Mr. Carrión Mena

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention (*continued*)

Initial report of Kyrgyzstan (continued) (CMW/C/KGZ/1; CMW/C/KGZ/QPR/1)

1. **Mr. Sarybaev** (Kyrgyzstan) said it must be remembered that Kyrgyzstan was one of only a few States in the region that was a party to the Convention, which was an indication of its commitment to ensuring human rights and freedoms. Labour migration was not only a means of distributing labour resources but also an opportunity to develop international relations and internal affairs.

2. In response to the concern expressed about migrant women working in the informal sector, he said that the Labour Code established measures to ensure that employers respected workers' rights. There was a State environmental and technical inspectorate and an oversight office attached to the Office of the Procurator-General which ensured that employers complied with the law. Moreover, employees were able to appeal to the courts directly in the event that they were not provided with an employment contract. They also had other ways of proving that they were employed and seeking reparation in the event of violations of their rights.

3. Turning to the issue of bride kidnapping, he said that, in the majority of cases, it was seen as a traditional marriage ritual and carried out with the full consent of the bride. When it occurred against the bride's will, it was considered a criminal offence and was punishable by imprisonment of up to 7 years, or 10 years if the bride was underage. Such cases were however rare.

4. Migration-related projects implemented in collaboration with international organizations generally had a very positive impact – for example, they had led to the State party's accession to the Convention. Kyrgyzstan was involved in a number of programmes that enabled it to improve its collection of statistics, enhance its national legislation and develop close cooperation with non-governmental organizations (NGOs) and international agencies, including the International Labour Organization and the Office of the High Commissioner for Human Rights.

5. Replying to the question on outsourcing work, he said that the practice was quite common. Persons employed in the cleaning or construction sectors were often employed through an agency. Such work entailed risks and depended on the terms of the employment contract. It was in the interests of both the employee and the agency to have a contract.

6. While agreeing that there was a contradiction between the respective definitions of migrant worker in the Convention and Kyrgyz legislation, he said that, in practice, it did not restrict the access of migrant workers in an irregular situation to government bodies. Nevertheless, there were plans to amend national legislation to bring it into line with the Convention and establish a more precise definition of migrant worker.

7. In accordance with the consular agreement between the Russian Federation and Kyrgyzstan, in the event that a Kyrgyz national was detained in the Russian Federation — or vice-versa — the nearest consular authority had to be informed within three days and given unrestricted access to the detainee so as to be able to guarantee their rights and assist them throughout the legal proceedings.

8. As far as cooperation with NGOs and recommendations issued by them were concerned, the Ministry of Labour, Migration and Youth worked closely with NGOs that dealt with issues relating to migration. Kyrgyzstan had established a public platform for dialogue and exchange and an advisory body attached to the Ministry of Labour, Migration

and Youth, both of which included NGO representatives and aimed to optimize the situation of migrant workers and resolve their problems through dialogue and consultation.

9. He did not anticipate that entry into the Eurasian Economic Union would prevent Kyrgyzstan from complying with the Convention. Despite the fact that other members of the Union were not parties to the Convention, there was no contradiction between the provisions of the Convention and those of the Union's legal framework as far as migrant workers were concerned. Regrettably, not enough effort was being made to increase public awareness of the Convention. However, greater attention would be paid in future to finding ways and means of remedying the situation.

10. Turning to the question on the status of the Convention under Kyrgyz law, he said that in accordance with the Constitution, all international instruments to which Kyrgyzstan was party formed part of Kyrgyz legislation. International human rights treaties took precedence over other international instruments and were directly enforceable. Moreover, the Kyrgyz Constitution, which prevailed over all national legislation, contained provisions guaranteeing all the fundamental human rights enshrined in the various international instruments to which Kyrgyzstan had acceded. Thus, the rights set forth under the Convention were fully in line with those of the Constitution and were guaranteed for all persons in Kyrgyzstan irrespective of nationality or legal status.

11. As to the question about the involvement of Kyrgyz migrant workers in drug trafficking, he said that around 500 of the 500,000 of the Kyrgyz nationals residing in the Russian Federation in 2014 had been charged with drug related offences. The problem did exist and could have an adverse effect on the movement of Kyrgyz migrant workers, who could be subject to additional border inspections if suspected of carrying drugs.

12. Ninety per cent of migrant workers leaving Kyrgyzstan were ethnic Kyrgyz and emigrated primarily for economic reasons. He refuted the suggestion that ethnic Uzbeks and Russians left Kyrgyzstan as a result of discrimination. Kyrgyz law did not provide for the detention or deportation of irregular migrants in Kyrgyzstan in cases of first offences, when a fine was usually imposed. If such persons reoffended within the course of a year they could be deported, but only in accordance with a court ruling. Rulings by courts of first instance could be appealed and referred to the Supreme Court for a final ruling usually issued within one year. In general, the type of administrative offences in question related to residence and employment issues.

13. On the subject of conflicts between Chinese migrants and local residents, he said that a large proportion of migrant workers in Kyrgyzstan were Chinese nationals, most of whom travelled to Kyrgyzstan to work on Chinese-funded infrastructure projects for the duration of those projects. Between 2003 and 2015, the quota for foreign migrant workers employed in Kyrgyzstan had increased more than fivefold owing to project requirements. Quotas were drawn up in accordance with national economic requirements and there was no deficit. In the event that a quota for a p rticular project was not used, it would be reassigned to another project.

14. The Ministry of Labour, Migration and Youth drew up policies to address employment, migration and youth concerns. Under Kyrgyz law the definition of youth was people aged between 18 and 27, and they constituted the majority of the unemployed and the majority of Kyrgyz migrant workers. The Ministry's main objective was to ensure that people could find work in Kyrgyzstan and it oversaw a youth labour exchange, which organized regular job fairs. If graduates were unable to find work within the country, they would be assisted in finding a job abroad. The Ministry operated a centre for the employment of Kyrgyz citizens abroad, which provided advice on visa requirements and living and working conditions in the country of employment. A free hotline had been set up to answer related questions, and information booklets on migration procedures were

provided in various languages. Furthermore, a series of videos had been broadcast on television aimed at raising awareness of the risks of human trafficking and slavery.

15. The centre also implemented a memorandum of understanding on migration between Kyrgyzstan and the Republic of Korea, whereby Kyrgyz nationals who wished to work in the Republic of Korea were provided with pre-departure language training and were assisted in finding employment and in completing all the necessary documentation. The Ministry's youth division advertised job vacancies and facilitated contacts between employees and employers. There were over 100 agencies that offered vocational training programmes and trained around 26,000 people every year.

16. Private employment agencies seeking to place Kyrgyz nationals in employment abroad could only operate if they had a licence issued by the Ministry of Labour, Migration and Youth. To obtain licences agencies had to submit various documents proving that they had contacts with employers abroad, such as employment contracts. The Ministry of Labour, Migration and Youth monitored the activities of such agencies to prevent any violations of the rights of migrant workers, and agencies were obliged to submit information regularly on the numbers of persons employed and their destination countries. Nine private employment agencies had been granted licences in 2014 and had found employment for Kyrgyz nationals in Europe, the United States of America and the United Arab Emirates. A bill on private employment agencies drafted with the aim of regulating their activities was under discussion.

17. The plan proposed by the Russian Federation to set up temporary reception centres to accommodate and provide initial training for migrant workers had been discarded, for reasons unknown. The Government intended to ramp up its outreach programmes to raise public awareness of the Convention and to provide training to public officials.

18. Men and women were held separately in detention centres but there were no facilities solely for migrant workers. The commission of an administrative offence did not necessarily result in a foreign national being detained; instead, and depending on the gravity of the offence, fines were imposed. Foreign nationals who crossed Kyrgyz borders illegally could be returned. For criminal offences warranting incarceration migrant workers were held in the same conditions as Kyrgyz nationals.

19. In response to comments about the need to improve statistical data on migration flows, he said that an inter-agency electronic database had been developed to standardize and centralize data collected. The database was currently being piloted for a two-month period. Although various government agencies would have access to the database, it was likely to be used predominantly by migration and customs officials, since it contained information such as names and destination countries of migrants and the dates of their movements from countries. In conclusion, he provided detailed statistics on recent migration flows and on various offences committed by migrant workers and the types of penalties imposed.

20. **Ms. Iskakova** (Kyrgyzstan) said that the Government was committed to tackling corruption. In 2012, legislation on combating corruption had entered into force, and various programmes had been rolled out at the institutional level. The basic approach in fighting corruption was to establish the rule of law and increase the transparency and effectiveness of State bodies, inter alia, by implementing reforms among the judicial and law enforcement authorities, ensuring greater participation of civil society and emphasizing that punishment was inescapable. In fact, in recent years, more than 1,200 criminal cases of corruption had been opened.

21. Migrant workers and Kyrgyz nationals were guaranteed equal access to legal assistance in Kyrgyzstan and the State provided a lawyer if a person did not have or could not afford legal representation.

22. Various affirmative action programmes had been put in place to facilitate the return to Kyrgyzstan of persons of Kyrgyz ethnic origin who, having fled the country under the former Soviet Union or during the revolution, had the right to return. Those programmes included loans for the construction of housing and local authority assistance for their reintegration. Those programmes were not considered as discriminatory, but were intended to compensate a disadvantaged group for the shortcomings of the past.

23. The maternal mortality rate was indeed high in Kyrgyzstan and fell short of the related Millennium Development Goals. While migrant workers were not discriminated against in terms of their access to health care, including maternity services, they were affected by the problem. There were various reasons for the high mortality rate which were connected with the country's overall economic difficulties as well as the organization of its health-care services.

24. Regrettably, the Kyrgyz courts did not refer to international treaties such the Convention, and judges certainly needed training in that regard. However, it would be difficult to introducing such training until ongoing judicial reforms had been completed. In accordance with the Constitution, international agreements in force and to which Kyrgyzstan was a party formed part of the legal system and international human rights treaties took priority over other national laws. However, Kyrgyzstan needed to develop appropriate mechanisms to ensure that such provisions were effectively implemented.

25. Lastly, on the issue of whether Kyrgyzstan would recognize the competence of the Committee to receive and consider communications, under articles 76 and 77 of the Convention, she stressed that while Kyrgyzstan was a party to almost all major international human rights instruments, and had agreed to the communications procedure under two of them, it was still a fledgling country. It had undergone a revolution in 2010 and, within two years, had gone through political transition, established a constitution and held parliamentary and presidential elections. It needed time to create effective mechanisms to deal with its existing commitments.

26. **Mr. Sarybaev** (Kyrgyzstan) said that in order to improve contact with Kyrgyz migrant workers abroad, the Government was planning to establish offices of the Ministry of Labour, Migration and Youth in the main destination countries for migrant workers. Formerly, services in the countries where Kyrgyz nationals most frequently sought work had been provided by the Ministry of Foreign Affairs. An agreement to establish an office of the Ministry of Labour, Migration and Youth of Kyrgyzstan in the Russian Federation was due to be signed imminently. In addition, it was planned to have voluntary representatives of the Ministry of Labour, Migration and Youth in other countries with a significant number of Kyrgyz migrant workers. Such persons could be diaspora leaders, Kyrgyz nationals or nationals of the destination countries provided that they had the necessary authority to protect the legal rights and interests of migrant workers in those countries. Within Kyrgyzstan, work was under way to create a new category of highly skilled and specialist foreign workers who would not be subject to quotas which would streamline the procedures for obtaining work permits. The criteria for eligibility included the requisite level of education and work experience for which commensurate salaries would be established.

27. **Ms. Toktalieva** (Kyrgyzstan) said that an agreement had been in force since 2014 to ensure that migrant workers and their families had the right to medical care and health insurance within the Commonwealth of Independent States. Under the agreement, the social protection costs of foreign nationals with permanent residence status were covered by the employer on the same basis as nationals of the State of employment. Accordingly, foreign nationals who were permanently resident in Kyrgyzstan were treated in the same way as Kyrgyz nationals in respect of health-care services, as well as in outpatient clinics where payment was required. Family medical care, vaccinations and emergency treatment were

provided free of charge to children up to the age of 5 years, including children of Kyrgyz migrants in the Russian Federation. There had been instances where Kyrgyz female migrant workers had left their children in the Russian Federation, but in such cases repatriation procedures had been undertaken in order to bring them back to Kyrgyzstan.

28. **Ms. Ladjel**, after commending the State party on its extensive laws covering international migration, internal migration and labour migration, said that she wished to know how those three separate laws complemented each other and why there was not one single piece of legislation.

29. **Ms. Dicko** said that she would welcome further information on the mechanisms for disseminating and raising awareness of the Convention among migrant workers and for ensuring that they had access to information about the conditions in their destination country. Noting that social security was a national obligation, she enquired what provisions had been made for Kyrgyz migrant workers who retired abroad and whether there were any social security agreements with host countries.

30. **Mr. Taghizade** said that he would appreciate clarification as to whether the provisions of the Convention were invoked by the Kyrgyz courts and how they were disseminated among public officials. Noting that the centralized database on migration flows from Kyrgyzstan was likely to be of use only to customs and migration agencies because of the type of information it contained, he asked whether there were any further projects in the pipeline to collect data on migrant workers abroad. While he welcomed the information provided on developments in consular services, what he really wished to know was how the rights of Kyrgyz migrant workers and their families were upheld when they were outside the country. For example, could migrant workers vote in elections held in Kyrgyzstan? Information available indicated that the situation was not entirely satisfactory on that front.

31. The delegation had provided detailed information on criminal offences committed by migrant workers held in detention whereas what the Committee was interested in was whether such persons had been detained for reasons relating to their migrant status, such as breaches of laws relating to residence rights. Furthermore, in the light of reports that Kyrgyz migrant workers held in detention centres in their host countries had been subjected to violence, sexual exploitation or had had their wages withheld, he would appreciate information on steps taken in the host countries to protect their rights.

32. **Mr. Ceriani Cernadas** said that he would like further clarification on how the State party differentiated between migrants in a regular situation and those considered to have irregular status. Were there any rights enjoyed by migrants in a regular situation to which those in an irregular situation did not have access, such as consular protection? Were any of those rights limited in terms of the State party's interpretation of migration labour laws?

33. Noting that migrants in an irregular situation were not detained in Kyrgyzstan but liable to fines and that repeat offenders could however be deported, he asked whether it was possible for migrants to regularize their situation after payment of the fine in order to avoid any risk of deportation. He asked for more information on the procedure for returning foreign nationals who contravened the borders of Kyrgyzstan. Was it an administrative procedure, or was it court ruling as with deportation? Lastly, he reiterated his concern about violence against Chinese migrant workers and asked what action had been taken to combat incidences of racism and xenophobia in the State party.

34. **Mr. Haque** asked what policies the Government had in place to address the issue of the brain drain. He also wished to know how the State was seeking to attract second or third generation Kyrgyz emigrants back to the country and how their rights were guaranteed particularly in respect of citizenship.

35. **Mr. Brillantes** said that he wished to know more about the situation of migrant workers of Uzbek origin and whether they suffered mistreatment or were targets of xenophobia.

36. **Mr. Kariyawasam** asked how many consulates Kyrgyzstan had in the Russian Federation and in Kazakhstan, how consular staff dealt with issues involving Kyrgyz migrant workers and whether they had received any training in that regard, particularly in the light of the fact that neither the Russian Federation nor Kazakhstan was a party to the Convention.

37. **The Chairperson**, speaking as a member of the Committee, asked whether there was any policy in place to regulate workers' remittances, in particular from the Russian Federation. He also asked whether any bilateral or multilateral migration agreements were envisaged or had been concluded.

The meeting was suspended at 11.50 a.m. and resumed at 12.15 p.m.

38. **Ms. Iskakvova** (Kyrgyzstan) said that complaints regarding the mistreatment of Uzbek migrant workers had been reported by NGOs. The Uzbek population had not been targeted but, as Kyrgyz legislation did not distinguish between migrants of different ethnic groups, no separate statistics were available concerning violations specifically against them. It was possible that the information provided by the NGOs in that regard referred to repercussions stemming from a brief period of inter-ethnic conflict between Kyrgyz and Uzbeks in June 2010. That episode had been met with a decisive response on the part of the Government as, at its own request, the Independent International Commission of Inquiry into the Events in southern Kyrgyzstan had been formed. The Commission had issued a report to which the Government had responded, and the Chairperson of the Commission had acknowledged that the Commission's report did in fact contain discrepancies and that not all the circumstances had been taken into account. In the wake of the Commission's findings, the Government had worked with a number of civil society organizations to implement measures aimed at strengthening cooperation between ethnic groups. One of those measures was a plan of action for 2013–2017, the implementation of which was to be monitored by a special office on inter-ethnic cooperation attached to the President's office. It included provision for training law enforcement officers, reviewing legislation and ensuring that the Uzbek language was used in schools and by the media.

39. Special provision was made for the return of second or third generation Kyrgyz emigrants and legislation had been amended to facilitate their re-entry. Returning families had no residence requirements to meet. Once their status had been established, which took up to two months, they could apply for citizenship and their cases were decided within one year. They also enjoyed facilitated access to local government services and bank loans.

40. **Mr. Sarybaev** (Kyrgyzstan) said that the three different laws on migration covered different areas. The law on internal migration regulated issues relating to internal mobility such as registration of permanent and temporary residence, but not employment matters which were regulated by separate legislation. The law on international migration regulated matters such as movements of foreigners across the border and visas for foreigners for different purposes including tourism and permanent and temporary residence. The law on labour migration established procedures governing the entry and stay of foreign workers in Kyrgyzstan, and related quotas, as well the conditions for the departure and employment of Kyrgyz nationals abroad and the requisite documentation. Those laws were being reviewed by the Ministry of Labour, Migration and Youth to see if they needed to be amended or updated to reflect current circumstances.

41. Responding to the question about the mechanisms in place for disseminating and raising awareness of the Convention, he said he recognized that greater efforts needed to be made along those lines. He had already given details of the various measures to ensure that

persons seeking employment abroad were informed about conditions in the destination country. They included hotlines and information campaigns through the mass media.

42. As to the pension rights of migrant workers, under an agreement concluded in 2009 spelling out welfare and pension provisions within the Commonwealth of Independent States (CIS), nationals of one CIS State who were permanently resident in another CIS State were entitled to a pension there. The question of pension entitlements in the Eurasian Economic Union was still under discussion. Provision was made for Kyrgyz nationals working in the Republic of Korea to have their pension contributions transferred to Kyrgyzstan.

43. In order to improve data collection on Kyrgyz nationals residing and working abroad, a campaign was under way to take their fingerprints, signatures and photos and to record their movements across the border. The deliberate violation of borders by foreign nationals was a criminal offence under Kyrgyz law. If the violation was accidental — as sometimes happened in cases involving workers tending livestock — the persons involved could voluntarily return to their country of origin after providing an explanation of how the incident had occurred. Persons seeking asylum had to apply for refugee status and would be allowed to remain while the review process, including any appeal, was under way. However, they could not be returned to their country of origin if there were grounds for believing that they might be subjected to torture there.

44. There was no distinction made between Kyrgyz migrants in a regular and irregular situation. Kyrgyz nationals, whatever their status, enjoyed the same rights and received the same assistance, without distinction, including assistance with regularizing their status in host countries and with returning to their home country. The brain drain was not an overriding concern, but measures were being taken to define the status of foreign specialists and to help highly specialized Kyrgyz citizens find employment in their chosen field in Kyrgyzstan.

45. **Ms. Toktalieva** (Kyrgyzstan) said that protecting the rights and interests of Kyrgyz citizens abroad was a priority task of the Kyrgyz diplomatic and consular offices which provided a range of consular services on a daily basis and free legal assistance. Over the course of the previous 12 months, some 35,000 requests for consular services had been met. Moves were afoot to open additional consular offices abroad, particularly in certain cities within the Russian Federation, including Saint Petersburg, in order to provide support in areas where Kyrgyz migrant workers and their families were concentrated.

46. Parliamentary elections, to be monitored by observers from the European Union, were scheduled to take place in October 2015. In preparation for the elections measures were under way to compile biometric data which would help to ensure transparency. Around 17 different organizations were active in the Kyrgyz migrant diaspora in the Russian Federation and Kazakhstan, and there were mechanisms in place to work with those organizations and compile lists of voters. A number of different agreements existed with the countries to which Kyrgyz nationals travelled most. If the Committee required further information on that subject she could provide it to the secretariat.

47. **Mr. Brillantes**, after thanking the members of the delegation of Kyrgyzstan for the presentation of the initial report, said that the spontaneous nature of their replies was an indication of how well they had prepared for their meeting with the Committee.

48. **Mr. Taghizade** said that he also wished to thank the members of the delegation. Not only had they answered many of the Committee's questions but they had also elaborated on the problems faced by migrant workers in Kyrgyzstan and by Kyrgyz migrant workers abroad. The dialogue had been frank and satisfactory and had helped the Committee to understand the current situation in the State party and how it intended to continue to improve safeguards for migrant workers. He hoped that the questions raised by the

Committee would help Kyrgyzstan to focus on priorities in legislation, public awareness and other fields, and thereby meet its obligations under the Convention.

49. **The Chairperson** and **Mr. Brillantes** said that it was very gratifying to see how a country which had enjoyed independence for a few decades only had already managed to sign and ratify so many human rights instruments.

50. **Ms. Toktalieva** (Kyrgyzstan), after thanking the Committee for the constructive dialogue, said she hoped that the Committee's recommendations would help the Kyrgyz Government in its implementation of the Convention, and that the Committee would find ways to involve both host countries and countries of origin in the protection of the human rights of migrant workers.

The meeting rose at 12.55 p.m.